

Exhibit B

1

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS
3 C.A. NO. 04-10131

ORIGINAL

6 HEATHER KIERNAN,
7 Plaintiff *
8 vs. *
9 ARMORED MOTOR SERVICE OF AMERICA, *
10 INC. AND FRANCESCO CIAMBRIELLO, *
11 Defendants *

DEPOSITION OF HEATHER L. KIERNAN

15 MORGAN, BROWN & JOY, LLP

16 | 200 State Street

17 Boston, Massachusetts

18 June 17, 2005 9:55 a.m.

22 Marvellen Coughlin

24 Registered Professional Reporter

1 Q. Okay. So tell me what happens when
2 you tell him that your shoulder hurts?

3 A. He moves his chair up behind me,
4 his rolling chair, and he's sitting behind me
5 with his legs around the back of the chair, and
6 he starts to try to massage my shoulders.

7 Q. And does he try to massage both of
8 your shoulders --

9 A. I don't remember.

10 Q. -- or just one?

11 A. I believe both.

12 Q. And you're still sitting in the
13 chair?

14 A. Yes.

15 Q. How high up does the back of the
16 chair go?

17 A. Maybe halfway up my back.

18 Q. Okay. So sort of below your
19 shoulder blades?

20 A. Yes.

21 Q. And is it one of those chairs that
22 if you sort of push, lean back, does it go back?

23 A. It probably could have, but I have
24 a lock on it so I wouldn't fall.

1 Q. And the lock means so that it won't
2 sort of go back?

3 A. Yes.

4 Q. Okay. And does he actually touch
5 your shoulders?

6 A. Yes.

7 Q. And what does he do?

8 A. What does he do with my shoulders?

9 Q. Yes.

10 A. He just started massaging them, and
11 I told him not to do it.

12 Q. Okay. Did he use two hands?

13 A. I believe so, yes.

14 Q. And do you remember whether it was
15 one hand on each shoulder or was it two hands on
16 the injured shoulder?

17 A. I don't remember.

18 Q. Okay. And how long did he massage
19 your shoulder or shoulders before you told him
20 not to?

21 A. Not even a minute.

22 Q. And what specifically did you say
23 to him?

24 A. I told him I didn't want him to do

1 that. I don't know my exact words, but I know I
2 told him not to do it.

3 Q. What did he say, if anything, in
4 response to that?

5 A. I don't think he responded to that.

6 Q. Did he stop rubbing your shoulder?

7 A. Yes.

8 Q. Okay. Did he move away from you in
9 terms of the chair?

10 A. No.

11 Q. Okay. What happened next?

12 A. He tried to put his hand up my
13 shirt.

14 Q. And when you say up your shirt, do
15 you mean from going below so that it would --

16 A. Yes.

17 Q. -- come in -- did he try to put his
18 hand under your shirt?

19 A. Yes.

20 Q. And from the below as opposed --
21 and by below I mean from your waist up as opposed
22 to from the neck hole down.

23 A. I believe so.

24 Q. Okay. And what hand was it?

1 A. I have no idea.

2 MR. McLEOD: Objection.

3 Q. Was he still behind you?

4 A. Yes.

5 Q. Okay. And did he do that
6 immediately after he stopped rubbing your
7 shoulder?

8 A. Yes.

9 Q. And what did you say, if anything,
10 to him when he did that?

11 A. I told him to stop.

12 Q. Did you push his hand away?

13 A. Yes.

14 Q. Was it both hands or one hand?

15 A. I believe it was only one hand, but
16 I'm not sure.

17 MR. McLEOD: Objection. When you
18 say both hands or one hand, I want to be
19 clear who's touching -- whose hands are you
20 talking about, hers or his?

21 MS. ROMANTZ: His?

22 MR. McLEOD: Okay. I wasn't sure
23 if you were talking about the pushing away.

24 MS. ROMANTZ: Oh, okay.

1 How did you push away, let me ask
2 you that? Did you push his hand away?

3 A. Yes.

4 Q. And how did you do that?

5 A. I just moved his hand and pulled my
6 shirt back down.

7 Q. Where did he place his hands on
8 your body under your shirt, if anywhere?

9 A. On my breasts.

10 Q. And do you recall which breast it
11 was?

12 A. No.

13 Q. Were you wearing a bra?

14 A. Yes.

15 Q. And was it on top of your bra?

16 A. No.

17 Q. It was underneath your bra?

18 A. Yes.

19 Q. So did he put his hand under your
20 shirt and then under your bra?

21 A. Yes.

22 Q. And what did he do with his hand
23 once he put it there, if anything?

24 A. He was basically touching me

1 inappropriately under my bra.

2 Q. Was he moving his hand?

3 A. Yes.

4 Q. And how long was his hand there
5 before you pushed it away?

6 A. Not even a minute.

7 Q. And let me ask you, 'cause I know
8 witnesses have a tendency sometimes when I ask
9 how long something takes, they say something like
10 not even a minute. A minute is a very long time.
11 I mean, do you think it was there for a minute or
12 do you think it was there for a few seconds?

13 A. A few seconds.

14 Q. Okay. And let me ask you, because
15 I asked you how long he was massaging your
16 shoulder, and you said not even a minute. Do you
17 think he was massaging your shoulder for longer
18 than a few seconds?

19 MR. McLEOD: Objection.

20 A. It wasn't very long.

21 Q. Okay. Did you ever tell him when
22 he was massaging your shoulders that it felt
23 good?

24 A. No.

1 Q. Did you ever make any type of vocal
2 expressions which would indicate that it felt
3 good?

4 MR. McLEOD: Objection.

5 A. No.

6 Q. What happens -- do you both sort of
7 physically take his hand away or push his hand
8 away at the same time that you say something to
9 indicate that you don't want him to do that?

10 MR. McLEOD: Objection.

11 A. Can you repeat the question?

12 Q. Sure. All right, let me ask you
13 because I'm not even sure I did. Did you both
14 physically push his hand away as well as vocally
15 tell him that you didn't like him touching your
16 breast?

17 A. Yes.

18 Q. And did you do that simultaneously?

19 A. Did I --

20 Q. At the same time, push his hand
21 away and tell him that you didn't like it?

22 A. Yes.

23 Q. And do you remember specifically
24 what it was that you said to him?

1 A. Not specifically. I know I told
2 him to stop, but I don't know specifically the
3 words that I used.

4 Q. Did you say it in a raised tone of
5 voice?

6 A. I just told him to stop. I don't
7 know what tone of voice I had or --

8 Q. Okay. Were you angry?

9 A. Yes.

10 Q. What did he say when you told him
11 to stop?

12 A. He didn't really say anything. He
13 just kept doing what he was doing.

14 Q. Okay. Was he saying anything to
15 you while he was putting his hand under your
16 shirt and touching your breast?

17 A. Not that I recall, no.

18 Q. I'm sorry, what was that?

19 A. Not that I recall, no.

20 Q. When you pushed his hand away and
21 told him to stop, what happened then?

22 A. At some point he was attempting to
23 kiss me.

24 Q. Was he still sitting behind you?

1 A. Yes.

2 Q. And when you say -- were his legs
3 sort of straddling you, and by that I mean one on
4 each side?

5 A. Yes.

6 Q. And so your back is to his front?

7 A. Yes.

8 Q. And how did he try to kiss you?
9 Did he try to kiss you on your face?

10 A. Yes.

11 Q. And how does he try to do that?

12 MR. McLEOD: Objection.

13 Q. I guess I'm just trying to figure
14 out physically how that happened if the back of
15 your head is to him?

16 A. He moved my head back.

17 Q. And how did he move your head back?

18 A. With his hands.

19 Q. Okay. With both hands?

20 A. I believe so, yes.

21 Q. Okay. So he turns your head sort
22 of towards him?

23 A. Yes.

24 Q. And his hands are where on your

1 head?

2 A. I don't recall.

3 Q. And is this after he touches your
4 breast?

5 A. Yes.

6 Q. And what do you do when he puts his
7 hand on your head and turns your head?

8 A. I turned away.

9 Q. You turned your head away or your
10 body away?

11 A. My head.

12 Q. And did the two of you kiss?

13 A. No.

14 Q. Okay. Did any part of his lips
15 make contact with any part of your head?

16 A. Yes.

17 Q. What part?

18 A. I believe my cheek. I remember
19 being scraped by his facial hair on my face.

20 Q. Okay. And did he say anything
21 while he was doing that?

22 A. I believe I repeated again that I
23 didn't want to do that, and he said, "Why not?"
24 That's about the only thing he said.

1 Q. And what did you say in response to
2 the why not?

3 A. I believe I said, "I'm married.
4 It's not right."

5 Q. And did he respond in any way to
6 that?

7 A. No.

8 Q. Could you smell alcohol on his
9 breath?

10 A. Not that I recall.

11 Q. And so what happens after you twist
12 your head away?

13 A. Then he unbuttoned my pants and
14 tried to put his hand down my pants.

15 Q. And are you still sitting down at
16 this point?

17 A. Yes.

18 Q. And is he still sitting down?

19 A. I believe so, yes.

20 Q. And is he still sort of behind you
21 with his legs one on each side of you?

22 A. Yes.

23 Q. And does he actually unbutton your
24 pants?

1 A. Yes.

2 Q. And does he use one hand or two
3 hands to unbutton the pants?

4 A. I'm not positive.

5 Q. Okay. Does he put both of his arms
6 around you?

7 A. I believe so, yes.

8 Q. Okay. And what are you doing with
9 your hands while he is unbuttoning your pants --

10 MR. MCLEOD: Objection.

11 Q. -- if anything?

12 A. I know I had the timecards in my
13 hands still.

14 Q. Did you have the timecards in your
15 hands the entire time that he was massaging your
16 shoulder, putting his hand under your shirt to
17 touch your breast and then kissing you, or trying
18 to kiss you?

19 A. I don't recall if I had them in my
20 hands the whole time, but they were in front of
21 me.

22 Q. Okay. But you do recall that you
23 had the timecards in your hands when he tries to
24 or does unbutton your pants?

1 A. I don't recall. I mean, they were
2 in front of me, I know that much.

3 Q. Okay. And so far we've sort of
4 talked about three or four different actions, for
5 lack of a better word. Is this the chronology or
6 the correct order in which they occurred? And by
7 that I mean first the shoulder massage, then the
8 hands under the shirt touching the breast, then
9 the attempt to kiss you and then the unbuttoning
10 of the pants.

11 A. Yes.

12 Q. Okay. And so you don't remember
13 what, if anything, you did while he was
14 unbuttoning your pants?

15 A. I know I pulled his hand out and
16 buttoned my pants back up and zipped them back
17 up.

18 Q. So did he both unbutton your pants
19 and unzip your pants?

20 A. I believe so, yes.

21 Q. And you're still sitting down?

22 A. Yes.

23 Q. Did you try to stand up at all?

24 A. When I buttoned them back up and

1 zipped them up.

2 Q. Okay. Did you try to stop him
3 after he had unbuttoned your pants but before he
4 had unzipped them?

5 MR. McLEOD: Objection.

6 A. Yeah, I don't understand what you
7 mean by that.

8 Q. Okay. Did he unbutton the pants
9 before he unzipped the pants?

10 A. I don't know which way, how he did
11 it.

12 Q. Okay. When he unbuttoned and
13 unzipped the pants, what did he do then?

14 A. He put his hand down my pants.

15 Q. Okay. Were you wearing underwear?

16 A. Yes.

17 Q. Okay. Did he put his hands under
18 your underwear?

19 A. Yes.

20 Q. And did he touch you anywhere on
21 your body?

22 A. Yes.

23 Q. Okay. And where was that?

24 A. On my vagina.

1 Q. And other than touch you, did he do
2 anything with his hand?

3 A. He didn't have time to. I removed
4 his hand.

5 Q. Okay. And how long would you say
6 it was that his hand was in your pants touching
7 your vagina?

8 A. A couple of seconds.

9 Q. Okay. And at that point, is that
10 when you stood up?

11 A. Yes.

12 Q. And when you stood up, is that when
13 his hand was removed?

14 A. His hand was removed before I stood
15 up.

16 Q. Okay. Did you physically remove
17 his hand?

18 A. Yes.

19 Q. And how did you do that?

20 A. I just took his hand and took it
21 out of my pants and buttoned my pants back up.

22 Q. Okay. Where did you touch him to
23 remove his hand?

24 A. His wrist.

1 Q. And was it just one hand that he
2 had down your pants?

3 A. I'm not sure.

4 Q. And he was still behind you?

5 A. Yes.

6 Q. Sitting down?

7 A. Yes.

8 Q. Okay. And did you say anything to
9 him at that time?

10 A. I believe I said that I didn't want
11 to do this and that it wasn't right, and that's
12 when I was buttoning my pants back up.

13 Q. And is that when he said, "Why
14 Not"?

15 A. Yes.

16 Q. Was he still sitting when you stood
17 up?

18 A. I believe he also stood up.

19 Q. Okay. And what happened next?

20 A. That's when he asked me to go
21 through the money room.

22 Q. Okay. What did he say
23 specifically?

24 A. I'm not positive on his exact

1 words, but I know he said something along the
2 line of come with me.

3 Q. And did he indicate where it was
4 that he wanted you to go?

5 A. No.

6 Q. And what did you say when he said
7 come with me?

8 A. I said no.

9 Q. And what happened next?

10 A. He ended up taking me through the
11 money room down into Jay's office.

12 Q. Okay. Now, when you say he ended
13 up taking me down through the money room or to
14 the money room, where is the money room in
15 relation to the dispatch area where you are?

16 A. Basically the desk you're sitting
17 at at the window is to the left of that, and you
18 got to go through the money room to get to Jay's
19 office.

20 Q. Okay. And once you get through the
21 money room, is there a corridor?

22 A. Yes.

23 Q. And Jay's office is at the end of
24 that corridor?

1 A. Yes.

2 Q. And were the doors to the money
3 room -- so you entered the money room and exited
4 the money room through two different doors --

5 A. Yes.

6 Q. -- on opposite ends of the room?

7 A. Yes.

8 Q. And were both of those doors open?

9 A. Yes.

10 Q. And how was it -- when he said come
11 with me, or words to that effect and you said no,
12 how was it that you started walking?

13 A. He put his arm behind me and
14 started to bring me down there.

15 Q. Did he threaten you in any way
16 verbally?

17 A. Not verbally, no.

18 Q. Did he threaten you in any way
19 nonverbally?

20 A. Yes.

21 Q. And how was that?

22 A. He was very forceful and stern I
23 guess, I would say.

24 Q. And was he was forceful and stern